IN THE SUPREME COURT OF IOWA

CASE NO. 22-0686

IN RE: THE MARRIAGE OF MARY C. STREICHER AND SHANNON L. FRAZIER

MARY C. FRAZIER,
n/k/a MARY C. STREICHER,
Petitioner-Appellant

v.

SHANNON L. FRAZIER,

Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR CLINTON COUNTY
THE HONORABLE JOHN D. TELEEN, DISTRICT JUDGE
(Clinton County Case No. CDCV040786)

FINAL BRIEF OF APPELLEE SHANNON L. FRAZIER

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ROUTING STATEMENT

This case should be directed to the Court of Appeals because it presents a routine procedural matter.

STATEMENT OF THE CASE

The parties were married in 2010 and divorced in 2014 with the entry of a Decree of Dissolution of Marriage. On January 31, 2022, Mary filed a document entitled "Petitioner's Application for Vaccination Determination" (the "Application") (Petitioner's Application for Vaccination Determination App. 34). Shannon filed a resistance on February 10, 2022 (App. 37). On March 25, 2022 the Court held an oral hearing, via Zoom, and on April 18, 2022, the District Court denied Mary's Application on the basis that it did not have jurisdiction in the absence of a petition for modification (Order Denying Petitioner's Application for Vaccination Determination App. 49).

STATEMENT OF THE FACTS

Mary and Shannon are the parents of two minor children, LBF and OAF, ages 11 and 9. The parties were divorced on April 23, 2014 by the entry of a Decree of Dissolution of Marriage (the "Decree") (Decree of Dissolution of Marriage App. 31). The Decree awarded Mary and Shannon joint legal custody with primary physical custody awarded to Mary. The Decree did not reserve jurisdiction of the Court for any purposes whatsoever. The Decree

incorporates a Stipulation of Settlement (the "Stipulation") between the parties. The Stipulation contains certain provisions concerning medical/dental care for the minor children. There have been no further court proceedings between the parties since 2014.

There are no facts in dispute because the Court did not hold an evidentiary hearing. In her pleadings, Mary alleges that she and Shannon disagree about the need to obtain COVID vaccinations for the minor children. The only facts pertinent to this appeal are the pleadings filed by the parties. The Court did not take any evidence, testimony or make findings of fact.

ARGUMENT

I. THE COURT DOES NOT HAVE JURISDICTION TO DECIDE MARY'S APPLICATION BECAUSE MARY HAS NOT INVOKED THE AUTHORITY OF THE COURT BY FILING A PETITION FOR MODIFICATION.

A. Preservation for Appellate Review.

The issue of the district court's jurisdiction was preserved for review.

B. Scope and Standard of Review.

Pursuant to Iowa R. App. P. 6.907, review in equity cases is *de novo*.

C. Argument.

1. The Court is Without Authority to Act in the Absence of a Petition For Modification.

Subject matter jurisdiction is the court's power to hear and determine cases of a general class to which particular proceedings belong. *In Re Guardianship of Matejski*, 419 N.W.2d 576 (Iowa 1988). When courts act without legal authority to do so, they lack subject matter jurisdiction. *Pierce v. Pierce*, 287 N.W.2d 879, 881 (Iowa 1980). As the Iowa Supreme Court recently reiterated, a civil action is commenced by filing a petition. *Carlson v. Second Succession, LLC*, 971 N.W.2d 522, 524 (Iowa 2022). Here, the Court must first determine whether it has jurisdiction and authority to decide the issue raised in Mary's Application, in the absence of a petition for modification. If the trial court's jurisdiction was not properly invoked, the

appeal must be dismissed. *Stalter by Stalter v. Iowa Resources, Inc.*, 467 N.W.2d 586, 588 (Iowa App. 1991). "Without the filing of some form of allowable pleading, no civil action is commenced" and the party "has not invoked the authority of the trial court to hear and determine its purported claim." *Id.* As the court explained in *Christy v. Rolscreen Co.*, 448 N.W.2d 447, 450 (Iowa 1989):

> The issue here is not whether the district court lacks subject matter jurisdiction. Rather the issue is whether the court lacked authority to hear the two cases. Subject matter jurisdiction refers to 'the authority of a court to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court's attention.' *Wederath v. Brant*, 287 N.W.2d 591, 594 (Iowa 1980). Clearly, here, the district court had subject matter jurisdiction . . .
>
> A court may have subject matter jurisdiction for one reason or another may not be able to entertain the particular case. In such a situation we say the court lacks authority to hear that particular case. Sometimes we have referred to a "lack of authority to hear the particular case" as a lack of jurisdiction. See, e.g., *City of Des Moines v. Des Moines Police Bargaining Unit*, 360 N.W.2d 729, 730 (Iowa 1985). ("The issue is technically not one of subject matter jurisdiction. A district court obviously has jurisdiction to entertain declaratory judgment actions. The issue is one of jurisdiction of the particular case. This is because a court lacks authority to entertain particular declaratory judgment <u>suits in which its jurisdiction has not been properly invoked</u>.")
>
> A statute, like Chapter 601A, that creates a cause of action and establishes procedures for enforcing that action provides an excellent example of how a court may have subject matter jurisdiction, yet lack the authority to hear a particular case. Such a statute gives the district court subject matter jurisdiction over the type of action the statute creates. By following the statutory procedures, a party invokes the authority of the court to hear the

> case. A party who ignores one or more of the procedures does not invoke such authority.

Christy at 450 [emphasis added].

2. No Petition was Filed and No Action is Pending.

Iowa RCP 1.301 clearly states "for all purposes, a civil action is commenced by filing a petition with the Court." Here, no petition has been filed. Mary filed her Application on January 31, 2022. However, Mary admits that her Application is not a petition for modification nor does Mary seek to modify the terms of the custody or care arrangements for the minor children (Appellant's Brief, p. 21). Rather, Mary seeks merely to "authorize the Petitioner to vaccinate the children to help protect against COVID-19." (App. 34). Unless Mary files a petition, or some other allowable form pleading, no civil action is commenced, and the trial court lacks jurisdiction. *Stalter v. Iowa Resources, Inc., et al.,* 467 N.W.2d 586, 588 (Iowa App. 1991). Under Rule 1.401, allowable forms of pleadings are "a petition, an answer, a reply to a counterclaim, an answer to a counterclaim, a cross petition and an answer to a cross petition." Further, pursuant to Iowa Code Section 602.8105(1), a party filing a petition must pay the applicable filing fee for filing and docketing a petition) pursuant to Chapter 598, the filing fee is $110. Iowa Code Section 602.8105(1)(c). Here, because Mary did not file a petition nor pay a filing

fee, no cause of action is pending and this case must be dismissed for lack of jurisdiction.

3. The Authority of the Court to Hear Mary's Case Requires a Petition for Modification.

Divorce law is strictly statutory. *Clough v. Clough*, 84 N.W.2d 16, 17 (Iowa 1957). *Elliott v. Elliott*, 147 N.W.2d 907, 909 (Iowa 1967). *Bitner v. Bitner*, 176 N.W.2d 162, 164 (Iowa 1970). Thus, there is no common law of divorce since it is purely a creation of statute. Iowa Code Chapter 598. Pursuant to Iowa Code §598.2, the district court has original jurisdiction of the subject matter of Chapter 598 cases. Thus, the district court has subject matter jurisdiction over divorce modifications. However, if a party has not properly invoked the authority of the court by filing a petition, the court lacks the authority to hear the case. *Christy*, 448 N.W.2d at 450.

The entry of a decree of dissolution is final; the case is over, subject only to the court's authority to modify the decree upon the filing of a petition and a showing of a change of circumstances. *In Re Marriage of Schlenker*, 300 N.W.2d 164, 165 (Iowa 1981). Only when a decree unequivocally reserves for later trial court review, without the necessity of showing a change of circumstances, does the court retain jurisdiction; otherwise, modification can be made only upon a proper showing of a change of circumstances

pursuant to a petition for modification. *In Re Marriage of Hute and Baker*, 2017 WL 3283382 at 2 (Iowa App. 2017).

It is well settled that in order to modify the rights of the parties under a divorce decree, a material and substantial change of circumstances must be shown to have occurred since the date of the original decree and the changed circumstances must not have been within the contemplation of the court when the decree was entered. *In Re Marriage of Feustel*, 467 N.W.2d 261, 263 (Iowa 1991); *In Re Marriage of Hoffman*, 867 N.W.2d 26, 31 (Iowa 2015). Accordingly, in order to invoke the authority of the court, it is axiomatic that the requesting party must file a petition for modification and allege a material and substantial change of circumstances. Whether the issue raised by Mary in this case constitutes a material and substantial change of circumstances warranting a modification of the decree cannot be determined because Mary has chosen not to file a petition for modification.

Here, Mary and Shannon's divorce decree was final in 2014. Mary does not allege that the district court retained any jurisdiction nor does the Decree reserve any jurisdiction. Therefore, the only authority the court possesses is to modify the existing decree upon the filing of a new petition alleging a material and substantial change of circumstances. No such petition is on file

and, accordingly, Mary has not invoked the authority of the court. Therefore, the appeal must be dismissed for lack of jurisdiction.

II. THE COURT'S AUTHORITY TO ACT AS JUDICIAL "TIE-BREAKER".

A. Mary's Request for the Court to Act as a Tie-Breaker.

This matter was raised, but not ruled on, by the District Court. Accordingly, the issue of the court acting as a tie-breaker was not preserved for appellate review. *In Re Ried's Marriage*, 212 N.W.2d 391, 393 (Iowa 1973); *In Re Marriage of Keener*, 728 N.W.2d 188, 198 (Iowa 2007).

B. Standard of Review.

Pursuant to Iowa R. App. P. 6.907, review in equity cases is *de novo*.

C. Argument.

1. Joint Legal Custody Under Iowa Code §598.1(3).

This matter involves the decision making by the children's parents concerning their medical care, specifically vaccination against COVID. Regardless of what the Court, or the attorneys, or the parties may think about COVID vaccinations, the Iowa Code §598.1(3) clearly and unambiguously provides for joint decision making to the parents holding joint legal custody.

> "Joint custody" or "joint legal custody" means the award of legal custody of a minor child to both parents jointly under which both parents have legal custodial rights and responsibilities toward the child and under which neither parent has legal custodial rights superior to those of the other parent. Rights and responsibilities

> of joint legal custody include, but are not limited to, equal participation in decisions effecting the child's legal status, medical care, education, extracurricular activities and religious instruction. [emphasis added]

The Decree also provide for joint determination of medical decisions jointly to the parents. The Decree does not reserve any jurisdiction to the court to decide this matter as a tie-breaker.

Because the parties may be having a disagreement regarding one of the enumerated rights and responsibilities of parents holding joint legal custody in Iowa Code §598.1(3), Mary believes that the court should create a judicial remedy to act as a "tie-breaker" to override one parent or the other concerning the children's medical care. Fortunately, this Court does not need to reach the issue since, Mary has not properly invoked the authority of the Court by filing a petition for modification. Further, Mary has not preserved this issue for appellate review. Although Mary raised the tie-breaker issue in the District Court, the District Court did not rule on the issue because the jurisdictional issue was dispositive. However, even if Mary had properly invoked the authority of the Court and preserved it for appellate review, Iowa Code §598.1(3) clearly states that Mary and Shannon shall make joint decisions concerning the children's medical care and shall have "equal participation in decisions."

As previously discussed, divorce in Iowa is purely statutory. *Bitner v. Bitner*, 176 N.W.2d 162 (Iowa 1970). Divorce actions are tried in equity. *In Re Marriage of Tigges*, 758 N.W.2d 824 (Iowa 2008). To interpret statutes, Iowa courts examine the language of the statute. *State v. Nelson*, 329 N.W.2d 643, 646 (Iowa 1983). If the language is clear, the court may not look beyond the express terms of the statute. *Id.*; *Homan v. Branstad*, 887 N.W.2d 153, 166 (Iowa 2016) ("Under the guise of construction, an interpreting body may not extend, enlarge, or otherwise change the meaning of a statute."). When interpreting a statute, Iowa courts give words, phrases, and punctuation their plain, ordinary meaning, and presume that no part of a statute is intended to be superfluous. *Thompson v. Kaczinski*, 774 N.W.2d 829, 833 (Iowa 2009). The court gives meaning to the statutory changes the general assembly enacts. *Homan*, 887 N.W.2d at 166.

The goal of statutory construction is to determine legislative intent. *State v. Dohlman*, 725 N.W.2d 428, 431 (Iowa 2006). Iowa courts determine legislative intent from the words chosen by the legislature. *Homan*, 887 N.W.2d at 166. "Legislative intent may [also] be derived from the statute's subject matter, the object sought to be accomplished, the purpose to be served, underlying policies, remedies provided, and the consequences of various interpretations." *Id.* (internal citations and quotations omitted).

Iowa Code §598.1(3) is clear and unambiguous. There is no need for the court to construe or interpret the statute and this Court is bound to give the words chosen by the Legislature their plain and ordinary meaning. There is nothing unambiguous about the words "equal participation in decisions effecting the child's . . . medical care." Thus, it is a simple matter for this Court to conclude that Iowa Code Chapter 598 does not authorize acting as a tie-breaker following an award of joint legal custody.

There is not one word in Iowa Code Chapter 598 granting authority to the Court to act as a "tie-breaker" for the decisions which are reserved by statute to the parents holding joint legal custody of their children. The Court is not at liberty to modify the terms of the Iowa Code §598.1(3) simply because Mary thinks it is a good idea. As this Court has explained many times, policy arguments concerning divorce statutes must be made to the Iowa Legislature. *In Re Marriage of Thatcher*, 864 N.W.2d 533, 545 (Iowa 2015). It would be surprising if the Court were to ignore the statutory rights and responsibilities of joint legal custody created by the statute and override the Legislature's intent under the guise of creating a judicial remedy to act as a "tie-breaker".

2. Divorced Parents Have No Fewer Rights Than Other Parents.

All parents, regardless of their marital status, may disagree from time to time concerning the raising of children. All parents must somehow resolve their differences concerning child rearing in their own ways; by talking it over, by seeking the advice of others. Rather than require the parents to resolve their own differences in their own way, Mary proposes that the Court intervene in parental disputes where the parents hold joint legal custody. It is easy to foresee divorced parents disagreeing over football, music lessons, religious services, school activities, birth control and a myriad of other possible parental disagreements. For example, the parents may disagree as to whether a child should play football; one parent believes it is too dangerous while the other parent believes the child may get a college scholarship. After hearing the evidence, how could a court possibly make a decision concerning the best interest of the child where each parent has legitimate arguments. The answer is obvious, the court cannot and should not intervene in parental disputes as a "tie-breaker" or a super-parent. Parents who are not divorced (whether or not they were ever married) are not subject to a court imposed "tie-breaker"; why should divorced parents be subject to court intervention into their lives. Rather than ruminate about "an issue that has vexed family law practitioners for many years," this Court should simply apply the Iowa Code §598.1(3) as written

and leave it to the Legislature to make policy decisions. *In Re Marriage of Comstock*, 2021 WL 1016601 at *2; Appellants Brief, p. 8. The Court does not need to create a remedy for every perceived family problem, policy choices must be made by the Legislature. In the absence of a modification of the divorce decree, the Legislature has instructed that divorced parents are to resolve their differences without the intervention of the Court, the same as all other parents. Mary cites *Harder v. Anderson, Arnold, Dickey, Jensen, Gullickson and Sanger, LLP*, 764 N.W.2d 534 (Iowa 2009) for the proposition that when joint legal custodians have a genuine disagreement concerning the course of treatment effecting a child's medical care "the court must step in as an objective arbiter, and decide the dispute by considering what is in the best interests of the child," (citing a New Jersey case, *Pascale v. Pascale*, 660 A2d 485, 494 (N.J. 1995)). The problem with *Harder* is that it is not a divorce case. Rather, *Harder* involves a parent holding joint legal custody seeking a child's mental health records from the mental health provider. *Harder* does not stand for the proposition that the court can act as a "tie-breaker" when parents holding joint legal custody have a "genuine disagreement concerning their rights with respect to their children."[1] Mary claims that other Iowa courts have

[1] To the extent that *Harder* stands for the proposition that the court may act as a tie-breaker, it should be overruled as contrary to Iowa Code.

acted as tie-breaker in the past without the necessity of filing a petition for modification. However, all of the cases cited by Mary involved either (1) an original petition for divorce or (2) a petition for modification. No case cited by Mary holds that a court may act as a judicial tie-breaker outside the context of a petition for divorce or a petition for modification. *Kocinski v. Christiansen*, 2021 WL 5106051 at *4 (Iowa App. 2021) (petition for modification).[2] *In Re Marriage of Rigdon*, 2020 WL 7868234 at *2 (Iowa

[2] In fact, in *Kocinski* correctly frames the issue:

> "The custody statutes do not mention assigning sole decision-making authority for some responsibilities of child-rearing and joint participation for others. See *Hansen*, 733 N.W.2d at 690 ("when joint legal custody is awarded, 'neither parent has legal custodial rights superior to those of the other parent'" (citation omitted)). Yet we have found a smattering of cases where the district court unbundled the rights listed in Section 598.1(3) and (5). See *Sloan v. Casey*, No. 15-0921, 2015 WL 9451093 at *7-8 (Iowa App. 2015) (upholding modification of joint legal custody to make one parent solely responsible for scheduling medical appointments for the child); *In Re Marriage of Bates*, No. 11-1293, 2012 WL 1440340 at *4 (Iowa App. 2012) (affirming joint legal custody was unreasonable as it relates to health care decisions). As this Court has noted in the past:
>
> > [Chapter 598] appears to consider joint custody and sole custody as all or nothing propositions. When parties are awarded joint legal custody "both parents have legal custodial rights and responsibilities toward the child" and "neither parent has legal custodial rights superior to those of the other parent." The statute mentions nothing about assigning sole decision-making authority for some responsibilities and joint participation for others. Iowa's legal landscape is virtually barren of appellate cases in

App. 2020) (contempt citation, quoting concurrence); *In Re Marriage of Comstsock*, 2021 WL 1016601 at *2 (Iowa App. 2021) (pending petition for modification; temporary motion for determination regarding child's school, reversed and remanded for consideration at the final hearing on the petition for modification); *In Re Marriage of Bakk*, 841 N.W.2d 355 *2 (Iowa App. 2013) (appeal of original divorce petition/decree concerning removing child from daycare); *Gaswint v. Robinson*, 2013 WL 4504879 at *5 (Iowa App. 2013) (appeal from original divorce petition to establish custody regarding school attendance); *In Re Marriage of Laird*, 2012 WL 1449625 at *2 (Iowa App. 2012) (petition for modification of decree, regarding school attendance); *Hemesath v. Bricker*, 2010 WL 446990 at *3 (Iowa App. 2010) (petition for modification seeking to terminate shared physical care); *Vogt v. Hermanson*, 2017 WL 2875697 at *2 (Iowa App. 2017) (petition for modification); *In Re Marriage of Jacobs*, 2017 WL 5185435 at *1 (Iowa App. 2017) (petition for modification to award post-secondary education support under new statutory authority); *In Re Marriage of Bieber*, 2011 WL 1136273 at *1 (Iowa App. 2011) (petition for modification and retained jurisdiction in original decree to

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> which the district court unbundled legal custody rights. Our Supreme Court has not spoken on the matter.
>
> *Armstrong v. Curtis*, No. 20-0632, 2021 WL 210695 at *3 (Iowa App. 2021)."

decide school attendance); *In Re Marriage of Beal*, 2006 WL 1279054 at *1 (Iowa App. 2006) (petition for modification dismissed); *In Re Marriage of Teepe*, 271 N.W.2d 740, 742 (Iowa 1978) (original custody determination for child born after entry of decree of dissolution).

Mary has not cited one Iowa case where the Court exercised authority act as a tie-breaker outside of a pending petition for modification or as part of the original divorce proceedings. In fact, in *Comstock,* the Court of Appeals reversed a judicial tie-breaker decision of the district court and remanded the case to make a determination after a full evidentiary hearing on the pending petition for modification. *See also In Re Marriage of Rigdon*, 2020 WL 7868234 at *2 (Iowa App. 2020) (declining to hold a parent in contempt for unilaterally placing the child on medication). The reason Mary is unable to cite any supporting case is because none exist. The reason none exist is because the Iowa courts are not authorized to act as a judicial tie-breaker under Iowa Code §598.1(3). It is the Legislature's prerogative to make policy decisions. "[it] is not the role of [the] court to alter a statutory requirement in order to effect a policy considerations that are vested in the Legislature." *In Re Marriage of Thatcher*, 864 N.W.2d 523, 544 (Iowa 2015) (quoting *Kakinami v. Kakinami*, 260 P.3rd 1126, 1132-33 (Hawaii 2011)).

Legal proceedings do not offer remedies to all matters in life. Further, the Iowa Courts are not authorized to create judicial remedies under statutory causes of action created by the Legislature, such as divorce. Modification is the only remedy permitted under Iowa Code Chapter 598 once a divorce decree is final. Perhaps, if Mary had filed a petition for modification alleging a substantial and material change in circumstances, after a full evidentiary hearing, then, and only then, would the Court be authorized to consider the matter. That question is not before the court. Mary asks the Court create a new category of relief as a judicial tie-breaker. Mary's proposal is simply not the law, nor has it ever been the law. If the Legislature wants to create a procedure for the court to act as a tie-breaker, the Legislature can amend the statute. In the absence of a statutory procedure, this Court is not authorized to grant Mary relief she requests. Accordingly, Mary's appeal should be dismissed.

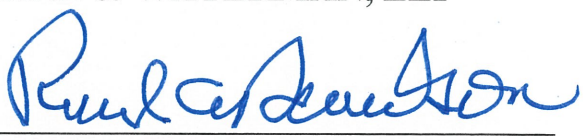
III. CONCLUSION.

Mary has chosen not to file a petition for modification and admits that her Application is not a petition. In the absence of the filing of a petition for modification, no action has been commenced and there is no jurisdiction for the court to decide any issue. Secondly, even if the court determines that an action is properly pending, the court is without authority to create a judicial remedy to overrule statutory rights created by the Iowa Legislature. The

Legislature defined rights and responsibilities of joint legal custody and the court is without authority to modify the terms of the statute under the guise of creating a new equitable remedy as a judicial tie-breaker. Accordingly, Mary's appeal should be dismissed.

Respectfully submitted,

LANE & WATERMAN, LLP



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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this Appellee's Proof Brief contains 5309 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14 point Times New Roman.

CERTIFICATE OF SERVICE AND FILING

I certify that on September 15, 2022, I filed Appellee's Proof Brief with the Clerk of the Appellate Court by electronically filing the document through the EDMS Electronic Filing System.

I further certify that on September 15, 2022, I served Appellee's Proof Brief on the Appellant by electronically serving Appellee's counsel through the EDMS Electronic Filing System.

Richard A. Davidson